

46 Am. Jur. 2d Judges § 84

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Judges

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IX. Disqualification to Act in Particular Case

A. Disqualification to Act in Particular Case, in General

§ 84. Disqualification of judge as yielding to necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  39, 40

A.L.R. Library

[Construction and Application of Rule of Necessity Providing that Administrative or Quasi-judicial Officer Is Not Disqualified to Determine a Matter Because of Bias or Personal Interest if Case Cannot Be Heard Otherwise, 28 A.L.R.6th 175](#)

[Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If Case Cannot Be Heard Otherwise, 27 A.L.R.6th 403](#)

Trial Strategy

[Disqualification of Trial Judge for Cause, 50 Am. Jur. Proof of Facts 3d 449](#)

Forms

Forms relating to rule of necessity, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

Generally, the rule of disqualification of judges must yield to the demands of necessity.¹ The rule of necessity means that a judge is not disqualified to sit in a case if there is no other judge available to hear and decide the case.² The rule of necessity generally requires a judge to remain in a case regardless of the judge's preference, if the sole power to decide a controversy resides in that official.³

Under the rule of necessity, if the only judges authorized by law to decide a case all have an interest in the outcome of the case, that interest is not disqualifying because judges have the absolute duty to hear and decide cases within their jurisdiction.⁴ Thus, when all judges would be disqualified, none are disqualified,⁵ and disqualification will not be permitted to destroy the only tribunal with power in the premises.⁶

The rule of necessity reflects the longstanding principle that to deny an individual access to courts for the vindication of his or her rights constitutes a far more egregious wrong than to permit a judge to hear a matter in which he or she has some interest.⁷ The doctrine of necessity is most often applied where the interest of the judge is tenuous,⁸ and will not apply where there is anyone else who can act in place of the interested administrative or judicial officer.⁹

Judges have been required, out of necessity, to rule on matters affecting their salaries,¹⁰ retirement compensation,¹¹ and other benefits.¹²

Similarly, due process considerations allow a biased administrative agency to make a decision which no other entity is allowed to make, and the rule of necessity permits such a body to proceed in spite of its possible bias or self-interest.¹³

CUMULATIVE SUPPLEMENT

Cases:

Even if judicial elections had resulted in conflict of interest with respect to imposition of death penalty, judge presiding over capital murder defendant's trial was not subject to disqualification; any conflict of interest would apply equally to all state judges, and thus common law rule of necessity would preclude disqualification. [People v. Johnsen](#), 10 Cal. 5th 1116, 274 Cal. Rptr. 3d 599, 480 P.3d 2 (Cal. 2021).

[END OF SUPPLEMENT]

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Footnotes

- ¹ U. S. v. Will, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980); Haase v. Countrywide Home Loans, Incorporated, 838 F.3d 665 (5th Cir. 2016); Fields v. Elected Officials'

Retirement Plan, 234 Ariz. 214, 320 P.3d 1160 (2014); *Gilbert v. Chiang*, 227 Cal. App. 4th 537, 173 Cal. Rptr. 3d 864 (4th Dist. 2014); *In re Howes*, 880 N.W.2d 184 (Iowa 2016); *New York State Ass'n of Criminal Defense Lawyers v. Kaye*, 95 N.Y.2d 556, 721 N.Y.S.2d 588, 744 N.E.2d 123 (2000); *Moro v. State*, 354 Or. 657, 320 P.3d 539 (2014); *Hooker v. Haslam*, 393 S.W.3d 156 (Tenn. 2012); *In re Judicial Disciplinary Proceedings Against Prosser*, 2012 WI 103, 343 Wis. 2d 548, 817 N.W.2d 875 (2012).

Fields v. Elected Officials' Retirement Plan, 234 Ariz. 214, 320 P.3d 1160 (2014); *Olson v. Cory*, 27 Cal. 3d 532, 178 Cal. Rptr. 568, 636 P.2d 532 (1980); *Nellius v. Stiffler*, 402 A.2d 359 (Del. 1978); *Schwab v. Ariyoshi*, 57 Haw. 348, 555 P.2d 1329 (1976).

As to a judge's interest in a case as being grounds for disqualification, generally, see § 88.

Lockett v. Evans, 2014 OK 33, 356 P.3d 58 (Okla. 2014).

Moro v. State, 357 Or. 167, 351 P.3d 1 (2015).

Eismann v. Miller, 101 Idaho 692, 619 P.2d 1145 (1980); *Crain v. Missouri State Employees' Retirement System*, 613 S.W.2d 912 (Mo. Ct. App. W.D. 1981); *Grinnell v. State*, 121 N.H. 823, 435 A.2d 523 (1981); *In re Judicial Disciplinary Proceedings Against Prosser*, 2012 WI 103, 343 Wis. 2d 548, 817 N.W.2d 875 (2012).

E & E Hauling, Inc. v. Pollution Control Bd., 116 Ill. App. 3d 586, 71 Ill. Dec. 587, 451 N.E.2d 555 (2d Dist. 1983), judgment aff'd, 107 Ill. 2d 33, 89 Ill. Dec. 821, 481 N.E.2d 664 (1985); *Board of Trustees of Public Employees' Retirement Fund v. Hill*, 472 N.E.2d 204 (Ind. 1985).

In re Howes, 880 N.W.2d 184 (Iowa 2016).

Com. v. Loretta, 386 Mass. 794, 438 N.E.2d 56 (1982).

Board of Educ. of Community Consol. High School Dist. No. 230, Cook County v. Illinois Educational Labor Relations Bd., 165 Ill. App. 3d 41, 116 Ill. Dec. 91, 518 N.E.2d 713, 44 Ed. Law Rep. 530 (4th Dist. 1987); *Payne v. Lee*, 222 Minn. 269, 24 N.W.2d 259 (1946).

Schwab v. Ariyoshi, 57 Haw. 348, 555 P.2d 1329 (1976); *Pines v. State*, 115 A.D.3d 80, 979 N.Y.S.2d 142 (2d Dep't 2014).

Fields v. Elected Officials' Retirement Plan, 234 Ariz. 214, 320 P.3d 1160 (2014); *Eismann v. Miller*, 101 Idaho 692, 619 P.2d 1145 (1980); *Crain v. Missouri State Employees' Retirement System*, 613 S.W.2d 912 (Mo. Ct. App. W.D. 1981); *Grinnell v. State*, 121 N.H. 823, 435 A.2d 523 (1981); *Moro v. State*, 354 Or. 657, 320 P.3d 539 (2014); *Wagoner v. Gainer*, 167 W. Va. 139, 279 S.E.2d 636 (1981).

Eismann v. Miller, 101 Idaho 692, 619 P.2d 1145 (1980).

Am. Jur. 2d, Administrative Law § 37.